IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5189 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

YUSUF ISMAIL IBRAHIM PATEL

Appearance:

MR HARDIK C RAWAL for Petitioner

(MR HK RATHOD) for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 23/03/2001

ORAL JUDGEMENT

#. By way of this petition under Article 227 of the Constitution, the State Road Transport Corporation has challenged the order dated 1.3.1989 of the Government Conciliation Officer rejecting the application seeking

approval for dismissal of the respondent no.1 who was a conductor.

#. The relevant facts, in brief, are in a narrow compass. The respondent conductor was, at a regular departmental enquiry found guilty of the misconduct of reissuing tickets and upon a decision to dismiss him an approval application under Section 33 (2)(b) of the Industrial Disputes Act, 1947 (the `Act') was made. That Approval Application No.214/1988 was rejected on technical grounds. Thereafter, the respondent raised an industrial dispute for reinstatement which was referred to the Labour Court and registered therein as Reference LCS No.345/1979 in the award of which, the rejection of the Approval Application was taken note of and heavily relying upon the same, reinstatement and full backwages with interest and cost were awarded by the order dated 31.5.1984. The petitioner has admittedly not challenged that award, but after 4 years a fresh order of dismissal on the same ground and the same departmental enquiry appears to have been issued and a fresh Approval Application under Section 33 (2) (b) of the I.D.Act was made. It is the order made in that Approval application which is under challenge in this petition.

#. The impugned order on the Approval Application of the petitioner relates and relies upon the circumstances that the order of dismissal based on the alleged misconduct dated 12.3.1978 was already adjudicated and set aside by virtue of the aforesaid award in Reference LCS No.345/1979. Thereafter the respondent had already served for about 4 years. In such circumstances, a fresh order of dismissal and a fresh cause of action to file an approval application could not have arisen. The learned counsel for the petitioner vehemently argued that the legality and merits of the original dismissal order has not been examined in any of the three proceedings and the respondent is enjoying undue advantage out of the technical lapses on the part of the petitioner. It was further submitted that in the case of serious misconduct of dishonesty involving moral turpitude, this Court ought to look at the substance of the matter and mete out proper punishment to the respondent.

#. It is true that the first Approval Application had had to be rejected for technical reason and the challenge to that rejection before this Court had also failed. But, thereafter a full-fledged adjudication of the industrial dispute raised by the respondent took place wherein the petitioner could have canvassed all the pleas available to it and if the petitioner was dissatisfied

with that award, it was open for it to challenge the same. But, instead, it has preferred to implement the award and not to challenge the same. Therefore, the contentions and defences that were available to the petitioner at the time of full-fledged adjudication have to be taken as availed and the employer cannot be allowed to reagitate the same pleas by issuing fresh order of dismissal. In this view of the matter, there is no error much less an error apparent on the face of the record, which requires interference under Article 227 of the Constitution. Therefore, the petition is rejected. Rule is discharged with no order as to costs.

(D. H. WAGHELA, J.)

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